CRIMINAL LAW—INTOXICATING LIQUORS—PRIOR CONVICTION OR ACQUITTAL AS BAR TO SUBSEQUENT PROSECUTION IN A DIFFERENT COURT.—The defendant transported liquor within the State in violation of a State statute, which existed before the eighteenth amendment, and before the Volstead Act. He was convicted in the State court. Later a prosecution based on the same illegal act of transportation was brought in a Federal court under the National Prohibition Act. The defendant entered a plea in abatement setting up the prior conviction in the State court as constituting former jeopardy. *Held*, plea overruled. *United States* v. *Regan*, 273 Fed. 727 (1921).

It is well established that where the same act constitutes an offense against each of several sovereigns, a prosecution by one does not bar a prosecution by the other. *United States* v. *Barnhart*, 22 Fed. 285 (1884); *Bloomer* v. *State*, 48 Md. 521 (1878). Since this view is rested on the ground that the two offenses, although arising from the same transaction, are different and committed against different sovereignties, an acquittal of a defendant in a State court on the charge of transporting intoxicating liquor is not a bar to his trial and conviction in a Federal court for transporting the same liquor. *Martin* v. *United States*, 271 Fed. 685 (1921). Nor does the Federal government punish a second time, because it is a paramount government, but because the laws of the two jurisdictions are different in given cases. *Unitd States* v. *Cruikshank*, 92 U. S. 542 (1875). And the fact that the accused has been indicted, but not yet tried in a State court under a State statute, does not prevent an indictment being brought against him in a Federal court under the National Prohibition Act. *United States* v. *Bostow*, 273 Fed. 535 (1921). However, due to the intricate problems of concurrent jurisdiction involved in the enforcement of the Volstead Act and the State prohibition laws there is not entire agreement in the holdings of the Federal courts on this important question, which will probably have to be ultimately settled by the Supreme Court, because it is a constitutional one and was not decided in the "National Prohibition Cases," 253 U. S. 350. The instant case is supported by the present weight of authority. *United States* v. *Holt*, 270 Fed. 639 (1921).

There is a contrary holding of a Federal court to the effect that a defendant who has been convicted in a State court for violation of a State prohibition statute, whether enacted before or since the Eighteenth Amendment to the Constitution, cannot be again prosecuted in a Federal court on the same transaction for violation of the National Prohibition Act. *United States* v. *Peterson*, 268 Fed. 864 (1920). Under this view the accused is protected against a double punishment for the same act, but even under the former holding where there has been a conviction with punishment under the State statute the Federal court will take into consideration the punishment previously administered for the same transaction in mitigation of its sentence. *United States* v. *Holt*, *supra*.

The Volstead Act is not a substitute for the internal revenue laws relating to the manufacture of liquor; therefore, in the absence of any inconsistency there is no general repeal of the latter, and any provision of such laws that can stand with those of the Act is not repealed

by implication. *United States* v. *Sacein Rouhana Farhat*, 269 Fed. 33 (1920); *United States* v. *Sohm*, 265 Fed. 910 (1920); *United States* v. *Turner*, 266 Fed. 248 (1920). But the National Prohibition Act, which imposes penalties for various violations, repeals provisions of the internal revenue laws, which prescribe different penalties for the same act. *United States* v. *Yuginovich*, 41 Sup. Ct. 551 (1921); *United States* v. *Windham*, 264 Fed. 376 (1920); *United States* v. *Puhac*, 268 Fed. 392 (1920). Hence, under the view that there is no repeal by implication, where a prosecution is had under the revenue statutes for operating a still without complying with the requirements of registry, giving bond, and posting notice, it will not be barred by a prior conviction under the Volstead Act for the unlawful manufacturer of liquor for beverage purposes. *United States* v. *Sacein Rouhana Farhat, supra.*

Turning to the State decisions a case of first impression is found holding that where one having in his possession intoxicating liquors in violation of the Volstead Act is convicted therefor in a Federal court he cannot be subsequently prosecuted in a State court for the same offense. *State* v. *Smith* (Ore.), 199 Pac. 194 (1921). But where there was a conviction in a Federal court for making alcoholic liquors in violation of the internal revenue laws of the United States the same offense could be punished in the State court as a violation of its laws. *Tharpe* v. *State*, 24 Ga. App. 349, 100 S. E. 754 (1919).

There are several cases dealing with the question as to whether a conviction or acquittal on a given indictment will bar a subsequent prosecution for the same transaction based on another indictment with different allegations. Thus, a prosecution and acquittal of defendant for unlawfully conveying intoxicating liquors is a bar to a subsequent prosecution for unlawfully having in possession the identical liquors with the intent to sell the same. *Jackson* v. *State*, 11 Okl. Cr. 523, 148 Pac. 1058 (1915). But a conviction under a statute for the unlawful sale of intoxicating liquors will not bar a conviction for the unlawful possession of the same liquors. *Chandler* v. *State* (Tex.), 231 S. W. 109 (1921). Likewise, where two separate indictments are preferred against a person, one charging him with having in his possession alcoholic liquors, and the other with selling alcoholic liquors, and the accused is tried under the indictment for having alcoholic liquors in his possession and is acquitted, this is no bar to a subsequent trial on the indictment charging him with selling such liquors. *Phillips* v. *State* (Ga.), 107 S. E. 343 (1921).

There are numerous holdings that a defendant's conviction in a recorder's or mayor's court for a violation of the prohibition law is not a bar to prosecution for the same offense in the State court. *Bell* v. *State*, 16 Ala. App. 36, 75 So. 181 (1917); *Leigeber* v. *State*, 17 Ala. App. 551, 86 So. 126 (1920). Especially is this true where there has been a conviction for the violation of a municipal ordinance, which contains some ingredient not essential to the State offense, or if the municipal offense lacks some ingredient essential to the State offense, is no bar to punishment for the State offense. *Morris* v. *State*, 18 Ga. App. 684, 90 S. E. 361 (1916). Similarly, it is no defense to a prosecution in a

municipal court for keeping intoxicating liquors for sale that there has been a prior prosecution and acquittal upon a charge of violating the penal laws of the State based on the same transaction. *Sutton* v. *Mayor, etc., of City of Washington*, 4 Ga. App. 30, 60 S. E. 811 (1908).

With regard to the last point the situation in Virginia has been materially changed by a statute providing that the mayor of a city is to have concurrent original jurisdiction with the circuit court to try a defendant for the unlawful transportation of intoxicating liquors. Hence, a prosecution thereunder in a mayor's court bars a prosecution for the same offense in the circuit court. *Bryan* v. *Commonwealth*, 126 Va. 749, 101 S. E. 16 (1919).

EQUITY—JURISDICTION—OBJECTION TO JURISDICTION BECAUSE OF ADEQUATE REMEDY AT LAW MAY BE WAIVED.—In a suit in equity for cancellation of a surety bond on the ground that it was obtained by fraud, the defendant objected to the jurisdiction in equity on the ground that the plaintiff had an adequate remedy at law. The defendant also pleaded a counterclaim asking recovery on the bond, and did not renew motion for dismissal on the ground that equity had no jurisdiction until the court indicated its determination to decide in favor of the plaintiff. *Held*, the defendant waived the objection to equity jurisdiction. *American Surety Co. of New York* v. *American Mills Co.*, 273 Fed. 67 (1921).

A bill in equity does not lie in any case where a plain, adequate and complete remedy may be had at law. *Singer Sewing Machine Co.* v. *Benedict*, 229 U. S. 481 (1913). But the objection to jurisdiction in equity may in certain cases be waived. *McGowan* v. *Parish*, 237 U. S. 285, (1914). A distinction must be made between cases where there is an entire lack of matter of equitable cognizance, and cases within the field of equitable jurisdiction but in which an element essential to the plaintiff's right to call upon the court for relief is lacking. Where the subject-matter of the bill is one of which a court of equity cannot properly have jurisdiction under any circumstances, it is well settled that the objection is not waived by failure to interpose it at any particular time, but is available at any stage of the proceedings. *Williams* v. *Fowler*, 201 Pa. 336, 50 Atl. 969 (1902); *Pittsburg, etc., R. Co.* v. *Stowe Tp.*, 252 Pa. 149, 97 Atl. 197 (1916). Where a bill in equity does not state a case proper for relief in that forum the court should dismiss it upon the hearing, whether there be any appearance by the defendant or not. *Graveley* v. *Graveley*, 84 Va. 145, 4 S. E. 218 (1887). Indeed, the court will take notice of the lack of equity jurisdiction *sua sponte*, although no objection has been raised by the parties. *Parker* v. *Winnipiseogee Co.*, 2 Black (U. S.) 545 (1862); *Lewis* v. *Cocks*, 23 Wall. (U. S.) 466 (1874).

If, however, the subject-matter of the bill is one of which courts of equity have concurrent jurisdiction with courts of law, the great weight of authority holds that the objection that equity has not jurisdiction, if not seasonably made, is waived. *Granite Brick Co.* v. *Titus*, 226 Fed. 557, 141 C. C. A. 313 (1915); *Johnson* v. *Huber*, 106 Wis. 282, 82 N. W. 137 (1900). In such case the objection must be taken at the earliest